

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PEGGY SUE SIMPSON,

Plaintiff,

v.

Case No. 11-13366
Honorable Denise Page Hood

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

**ORDER ACCEPTING AND ADOPTING THE REPORT AND RECOMMENDATION,
DENYING THE COMMISSIONER'S MOTION FOR SUMMARY JUDGMENT,
GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, AND REMANDING CASE FOR FURTHER PROCEEDINGS**

Now before the Court is Magistrate Judge David R. Grand's Report and Recommendation [Docket No. 14, filed July 19, 2012] on Plaintiff and the Commissioner's cross motions for summary judgment. When examining a Magistrate's Report and Recommendation, 28 U.S.C. § 636 governs the standard of review. This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*

The Magistrate Judge found that the ALJ had failed to consider the record as a whole and substituted his own opinion for that of Plaintiff's treating physician Dr. Steven Rapp. The ALJ concluded that the medical evidence contradicted Dr. Rapp's opinion. However, the Magistrate Judge found that the substantial evidence supported Dr. Rapp's opinion and Plaintiff's allegations. The Magistrate Judge concluded that the ALJ did not provide good reasons for rejecting Dr. Rapp's opinion and the residual functional capacity assessment was not based on

substantial evidence. The Magistrate Judge recommends the Court reverse the ALJ's decision, deny Plaintiff's request for an award of benefits, and remand the case back to the ALJ for further consideration. He also recommends that the ALJ consider any additional medical records that Plaintiff proffers. There was no objection to the Magistrate Judge's finding of fact or conclusions of law. For the reasons stated in the Magistrate Judge's July 19, 2012 Report and Recommendation, the Court accepts and adopts the Magistrate Judge's recommendation in its entirety.

Accordingly,

IT IS ORDERED that the Magistrate Judge David R. Grand's Report and Recommendation [**Docket No. 14, filed July 19, 2012**] is **ACCEPTED** and **ADOPTED** as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that the Commissioner's Motion for Summary Judgment [**Docket No. 13, filed December 8, 2011**] is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [**Docket No. 10, filed November 17, 2011**] is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER ORDERED that this action is **REMANDED** under sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendation.

Dated: August 30, 2012

s/Denise Page Hood
United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 30, 2012, by electronic and/or ordinary mail.

s/Sakne Srour for LaShawn R. Saulsberry
Case Manager